

the production of a marriage certificate and (iii) by evidence of cohabitation and repute.

As to the ceremony eyewitnesses testified that all "the usual Hindoo Marriage rites were carried through by the priest of the Temple" but this Court has no judicial knowledge of what constitutes a valid Hindoo marriage: no details of the rites performed were given and no priest was called to prove what rites are essential to constitute a valid Hindu marriage. The evidence on this point was considerably weaker than that adduced for the prosecution in the case of *R. v. Ratnam* (1930) S.S.L.R. 218. In that case a Brahmin priest gave evidence as to the ceremonies required and the witness related some details of the ceremonies actually performed but Murison C. J. in his judgment observed that the priest's evidence did not make it clear whether all the ceremonies he described were essential or some merely customary and further that the witnesses of the ceremony did not testify by any means to all the rites mentioned by the Brahmin priest. He concluded with the words "This evidence must leave the Court in doubt as to whether the ceremonies which were performed included the essentials of a valid marriage".

The case decided by a Court of three judges on the same section of the Penal Code indicates the strict nature of the proof required in cases of this description and the evidence as to the ceremony in the present case clearly falls short of what is there laid down as necessary.

The English cases establish clearly that on an indictment for bigamy it is necessary to prove the legal validity of a foreign marriage by expert evidence (See *R. v. Povey*, 6 Cox C.C. 83, *R. v. Lindsay*, 18 T.L.R. 761 (1902) and *R. v. Nagnib*, 12 C.A.R. 187). The same principle should I think apply in this Colony when proving a Hindu Marriage.

As regards the marriage certificate and the temple marriage register they would be invaluable corroborative evidence if the validity of the ceremony had been properly proved but the difficulty in which the prosecution find themselves is that the certificate is not issued nor is the register kept in pursuance of the provisions of any law. They are not public documents under section 74 of the Evidence Ordinance and consequently none of the presumptions in favour of public documents arise.

In England a certified copy of the marriage register obtained from the general register office or from the custodian of the particular register is sufficient to prove a marriage since the establishment of a complete system of registration of marriages but only by reason of the fact that such a system has been established by law. A similar system has been established in Ceylon by the Ceylon Marriage Ordinance but there is no such system of registering Hindu marriages in this Colony. It is most proper and desirable that Registers should be kept as this Mariaman Temple has kept the register produced in this case and

I do not entertain the least doubt that it is an accurate and complete record of the marriages celebrated there and that all the marriages recorded were properly performed but as it is not a public document I am unable to hold that by itself it supplies the very strict evidence required to prove a criminal charge such as this.

As regards evidence of cohabitation and repute it is clear that this will not suffice *Morris v. Miller* 4 Burr. 2057. As the case raises legal points of considerable nicety the Magistrate very properly reserved the points for decision of the Supreme Court under this section.

I hold accordingly that the prosecution did not produce the evidence required by law and under section 311 (1) of the Criminal Procedure Code I reverse the determination of the Magistrate and quash the conviction.

Conviction quashed.

F.M.S.

(Appellate Civil Jurisdiction)

Thorne, Ag. C. J. Prichard and Gerahty JJ.

Dec.1, 1932

K. ISMAIL GANEY ROWTHER and Company
First Defendant—Appellant

vs.

M. A. ABDUL KADER - Plaintiff—Respondent
THE OFFICIAL ASSIGNEE of the property of
K. P. PEER MOHAMED, a Bankrupt.

Second Defendant—Respondent

(Negri Sembilan Civil Appeal No. 5 of 1932.)

Bankruptcy Enactment, 1912, Section 33 (i) (a)—
Meaning of "injury to person"—Sanction of Official Assignee.

The words "injury to person" in Section 33 (i) (a) of the Bankruptcy Enactment 1912, mean any injury which the bankrupt suffers in mind or body, which might give rise to an action for damages, and which cause of, or chose in action, or right to sue remained in the bankrupt after bankruptcy.

The Official Assignee, by his sanction, only intimates his consent to the bankrupt's bringing or continuing an action. By his sanction he cannot divest himself of the property, either real or personal, which is vested in him by the receiving order or under an order of adjudication, and revert that property in the bankrupt for the purpose of bringing an action.

B. J. P. Joaquim for the Appellant.

H. Hopson Walker and the *Hon. Mr. S. Veerasamy* for First Respondent.

R. S. Jervoise, Official Assignee, in person.

Thorne, Acting, C. J.—This is an appeal by the first defendant against the order of Mr. Justice McFall, dismissing the first defendant's summons of the 9th of September of this year.

The action is brought by the plaintiff against the defendant to recover debts due, profits made, the value of certain stock in trade, and general damages in respect of injuries to reputation and business.

The plaintiff became bankrupt, and the defendant issued a summons in Chambers asking for an order, firstly that the Official Assignee be substituted as the plaintiff in the suit or, in the alternative, that the suit be dismissed as against the plaintiff generally.

When the application came on for hearing before the learned Judge below, the appellant abandoned the first prayer in his summons, but pressed the second, and it would appear that his counsel claimed that certain portions of the statement of claim were irrelevant, for the reason that there were alleged causes of action against the defendant which could not be supported by the plaintiff because, under the provisions of the bankruptcy law of this country the property of the bankrupt vested in the Official Assignee. The bankrupt could not, therefore sue to recover that property, and had no cause of action against him. What he really wanted was an order from the learned trial Judge striking out a part or the whole of the plaintiff's claim.

The learned Judge who heard the application was of the opinion that the matters raised in the arguments on the summons were such that they could not properly be disposed of until the action was heard, and that the proper course for the Court was to hear the evidence and then to decide whether or not the plaintiff is entitled to recover.

Now, the difficulty which arises is brought about by the language of section 33 (i) (a) of the Bankruptcy Enactment.

That Section reads:—

(i) Where a bankrupt has not obtained his discharge the following consequences shall ensue:—

(a) The bankrupt shall be incompetent to maintain any action (other than an action for damages in respect of an injury to his person) without the previous sanction of the Official Assignee;

The learned Judge below, as I understand him, held that the words 'Injury to person' meant only and must be limited to physical injury to the body. In my humble opinion that is too limited an interpretation of these words. I read these words 'injury to his person' to be any injury which the bankrupt suffers in mind or body, which might give rise to an action for damages, and which cause of, or chose in action, or right to sue remained in the bankrupt after the bankruptcy.

I understand the appellant to argue here that the learned Judge's interpretation of the section is correct, but I am unable to agree with that view.

Per contra I understand it to be argued that the words 'without the previous sanction of the Official Assignee' necessarily meant this, that if the bankrupt does receive the sanction of the Official Assignee, he can maintain an action in respect of any property of any kind whatsoever, which was in his order and disposition at the time of the bankruptcy.

I regret that I am unable to accept that proposition. In my view the Official Assignee by his sanction only intimates his consent to the bankrupt's bringing or continuing an action. The legislature did not intend, and the section does not mean, that by his sanction the Official Assignee can divest himself of the property, either real or personal, which is vested in him by the receiving order or under an order of adjudication, and re-vest that property in the bankrupt for the purpose of bringing an action.

In my view, and it is my view only, what the section means is this:—

With regard to any property which is left in the bankrupt after his bankruptcy, the bankrupt is incompetent to sue unless he first obtains the sanction of the Official Assignee. Instances of this are:—

- (a). the tools of his trade and the necessary wearing apparel and bedding of the bankrupt, his wife, and family;
- (b). after-acquired property until such time as the Official Assignee intervenes;
- (c). a contract made by the bankrupt after the bankruptcy;
- (d). damages for breach after bankruptcy of a contract for personal service made before and remaining unexecuted at the date of the bankruptcy; and
- (e). property vested in the bankrupt but of which he is a trustee.

This is not exhaustive, but in these instances the bankrupt is incompetent to sue unless he first of all goes to the Official Assignee, and gets the Official Assignee to say that he has no objection to the bankrupt bringing the action. To my mind this is all the section means.

From this interpretation of the section it will appear that in so far as the bankrupt claims to have a cause of action to recover damages to his reputation, he is entitled to sue without the sanction of the Official Assignee, but that so far as it is sought to recover property vested in the Official Assignee, the bankrupt has no cause of action. He is not the owner of the property which is vested in the Official Assignee.

The proper course, therefore, for the appellant would be to apply by summons in Chambers to strike out such portion of the plaintiff's claim as he deems it proper to ask the Court to delete, and to ask for a categorical order in respect of each item of the claim, and after the matter has been argued before the Court of first instance, and an order made, if he is dissatisfied with that order, to appeal to this Court.

I understand from the counsel for the respondent here that he concedes to the appellant that the earlier proceedings in this suit have been such that there is now no objection, or any possible bar, to the appellant making any such application, if he sees fit to do so. In my view the difficulty in this case has arisen very largely from the manner in which the matter was presented to the Judge in the Court for first instance.

For my part I would dismiss this appeal and tell the appellant to put his application before the Judge in the form appropriate to the relief he seeks.

There is a cross-appeal by the respondent who maintains that the judgment was right, because the section says that it is competent for the bankrupt to 'maintain any action'. On that it has been argued that the section only applies to suits commenced subsequently to the bankruptcy, and has no application to suits pending at that time. Again I regret that I am unable to accept that argument.

My view of the words 'maintain any action' is that they are wide enough to cover both the bringing or continuing of an action already brought. My view is, therefore, that the cross-appeal also should be dismissed with costs.

Prichard, J.:—I concur.

Gerahty, J.:—I concur.

Appeal dismissed.

(Appellate Civil Jurisdiction)

Thorne, Ag. C. J.

December 9, 1932.

M. R. M. PERIAKARUPPAN CHETTIAR

.....Appellant

v.

NG CHUAN.....Respondent

and

P. R. S. N. SOCKALINGAM CHETTIAR

.....Appellant

v.

SEW PIK.....Respondent

(Selangor Civil Appeals Nos. 29 and 30 of 1932)

(Appeals from Collector of Land Revenue, heard together)

*Usurious Loans Enactment, 1919, Section 3—
Reduction of interest by Collector of Land Revenue—
Practice.*

A rate of interest of 15 per cent. per annum on a charge is not in itself exorbitant, and before a Collector of Land Revenue can reduce the rate of interest he must take evidence and have regard to the terms of Section 3 (ii) of the Usurious Loans Enactment, 1919.

A. J. Bostock-Hill for both Appellants.

Both Respondents in person.

Thorne, Ag. C.J.:—This was an application by a chargee for leave to sell the charged premises to recover principal and arrears of interest due under a charge.

The matter was heard by the Collector of Land Revenue on the 30th of August, who took evidence and reduced the interest to 12 per cent.

The chargee preferred an appeal against this order.

The charge (in Civil Appeal 29/32) is dated the 13th day of August 1925, and secures the sum of \$4000/ with interest at 15 per cent. On the hearing before the Collector of Land Revenue, the chargor admitted the amount claimed by the chargee to be correct, but asked for six months time within which to pay.

The Collector acted under the provisions of the Usurious Loans Enactment, 1919. The provisions of this Enactment apply to a collector in the exercise of his jurisdiction under the Land Code, and the Collector is, therefore, quite right in considering whether or not the rate of interest reserved by the charge was excessive within the meaning of that Enactment.

Section 3 of that Enactment provides that where, in any proceeding to which this Enactment applies, whether heard *ex parte* or otherwise, the Court has reason to believe

"(a) that the interest is excessive, and

"(b) that the transaction was, as between the parties thereto, substantially unfair."

the Court may exercise certain powers conferred by that section. In the exercise of its jurisdiction under this Section, the Court must have regard to the terms of sub-section (ii) of that section, and to consider whether the rate of interest is reasonable, having regard to the risk incurred as it appeared to the creditor at the date of the loan, the presence or absence of security and its value, the financial condition of the debtor, and the result of any previous transactions of the debtor by way of loan of which the creditor has knowledge, and all circumstances materially affecting the relations of the parties at the time of the loan.

The learned Collector here took no evidence whatever of these matters, and he therefore had not the material before him proper to adjudge the question

The rate of interest may be so high as to be of itself sufficient evidence that the transaction was unfair. But in this instance it is to be noted that the rate of interest reserved by the charge is 15 per cent which is not of itself an exorbitant rate of interest. The order of the Collector therefore reducing the rate of interest was made on insufficient grounds, and I accordingly reverse his order and send the matter back to be re-considered, preferably, by another Collector of the same District, with an order that he may take the evidence necessary to enable him to form an opinion, and to make such order in the light of that evidence as he may deem proper. I award the appellant the costs of the appeal.

Case Remitted.